

1982 WL 189110 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 13, 1982

*1 The Honorable Nicholas P. Sipe
Executive Director
South Carolina Alcoholic Beverage
Control Commission
1205 Pendleton Street
Columbia, South Carolina 29201

Dear Nick:

You have asked this office to construe R7-34, Rules and Regulations of the South Carolina Alcoholic Beverage Control Commission, particularly with regard to its effect upon radio advertisements of the sale of alcoholic beverages. The Alcoholic Beverage Control Commission has in recent times consistently construed R7-34 as not prohibiting or otherwise restricting radio advertisements of alcoholic liquors.¹ That is, R7-34 has been construed by the Commission as permissive in its scope, rather than prohibitory, except as to the advertisement of price.

Ordinarily, when a regulation or rule is ambiguous or doubtful, the construction given to it by the promulgating body is given great deference. 2 AM.JUR.2d Administrative Law, §§ 241-245. If such construction is not manifestly wrong or clearly erroneous, it must be upheld. 2 AM.JUR.2d, supra, § 242.

While R7-34 is clearly subject to various constructions,² it cannot be said that the Commission's interpretation of R7-34 as not addressing [ipso facto not prohibiting] advertisements by radio is clearly erroneous. The regulation utilizes the permissive verb "may", rather than the mandatory "shall". In addition, the regulation speaks only to advertisements "in magazines, newspapers and other publications", neither of these terms could be construed to be inclusive of radio advertisements. Importantly, the General Assembly has had many opportunities to review the Commission's interpretation of its own regulation, and if it disagreed thereto, to pass corrective legislation addressing radio advertisements of alcoholic liquors; however, it has not done so.

Thus, consistent with the Commission's longstanding and reasonable interpretation of its own rule, this office must construe R7-34 as being permissive only, and in no way prohibiting or restricting advertisements of alcoholic liquors on radio.

Very truly yours,

Edwin E. Evans
Senior Assistant Attorney General

Footnotes

¹ R7-34 reads as follows:

A wholesale or a retail dealer may advertise his wares in magazines, newspapers and other publications issued at regular intervals and no advertisement of a retail dealer shall contain a direct or indirect reference to price. Also a retail dealer may advertise his name and address on matches, calendars, recipes, etc., provided prior approval of the Alcoholic Beverage Control Commission has been obtained.

² A reasonable alternative to the Commission's interpretation would be that the very language of R7-34 implies by its listing of permitted advertisements that those omitted, such as radio advertisements, are prohibited. "Where a statute directs that a thing may be done in one manner, it ordinarily implies that it shall not be done in any other manner." *Fletcher v. Page*, 220 P.2d 484. However, the presence of more than one reasonable construction does not invalidate that given by the promulgating agency.

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